

TOWN OF CRESTED BUTTE, COLORADO, SPECIAL TOWN COUNCIL MEETING

TUESDAY, ~~JUNE~~ ^{July} 28, 2015

PUBLIC NOTICE IS HEREBY GIVEN THAT THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO WILL HOLD A SPECIAL MEETING IN MEETING ROOM JUNIOR LOCATED IN CRESTED BUTTE TOWN HALL, 507 MAROON AVENUE, CRESTED BUTTE, COLORADO FOR THE PURPOSE OF DISCUSSING AND GIVING DIRECTION TO TOWN STAFF RELATIVE TO MATTERS INVOLVING THE 2015 ELECTION.

ON TUESDAY, JUNE 28, 2015 FROM 6PM TO 8PM.

I. CALL TO ORDER

II. SPECIAL MEETING – 6PM TO 8PM

A. Discussion and direction of Town Staff relative to matters involving the 2015 election.

III. ADJOURNMENT

Posted July 27, 2015.

J. D. BELKIN & ASSOCIATES, LLC

ATTORNEYS AT LAW
Whiterock Professional Building
502 Whiterock Avenue, Suite 200
P.O. Box 2919 (U.S. Mail Stop)
Crested Butte, Colorado 81224
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John D. Belkin, Esq.
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MEMORANDUM

*****Non Attorney - Client Privileged and Confidential Communication*****

TO: Town Council

CC: Todd Crossett, Town Manager
Lynelle Stanford, Town Clerk

FROM: John D. Belkin, Esq., Town Attorney

DATE: July 27, 2015

RE: 2015 Town Election Matters

1. **This memorandum serves as an update on current developments regarding the coordinated election with Gunnison County. No action needed yet.**
2. Following your decision last Monday, July 20, 2015 to proceed with a coordinated election, Gunnison County Attorney David Baumgarten and other County election officials reached out to me on Wednesday, July 22, 2015 expressing concern about certain needed election documentation and related deadlines in connection therewith.
3. On Friday, July 24, 2015, Town Clerk Lynelle Stanford and I shared a call with these officials regarding their requirement that the Town Council adopt an ordinance adopting Title 1, Colorado Revised Statutes, *Uniform Election Code of 1992*, as respects the coordinated election. This was the first time that I had heard of this requirement.
4. In addition to adopting Title 1, C.R.S., the County Attorney has stated that the County will require, as a new term in the coordinated election intergovernmental agreement (the "**IGA**") between the County and the Town, that the Town indemnify, defend and hold harmless the County (with legal counsel selected by the County) from claims arising out of the County performing the coordinated election for the Town pursuant to the IGA. I am working on getting a draft of the IGA with the required indemnification language from the County Attorney.
5. Separate from all of these election issues having been brought to my attention for the first time in the last several days, and weeks, and the time constraints on the Town Council

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now having to adopt an ordinance adopting Title 1, C.R.S. at its August 17 Town Council meeting, and the Town Council having to agree to a new indemnity provision in the IGA, I have the following concerns that I feel require Town Council discussion:

- 4.1 While adopting such an ordinance is within the Town Council's authority, the Town Charter, which may only be amended by a vote of the registered electors states as follows:

Section 2.4. - Election Commission.

An Election Commission is hereby created, consisting of the Town Clerk and two (2) qualified and registered electors of the Town, who during their term of office shall not be Town officers or employees or candidates or nominees for elective Town office. The elector-members shall be appointed by the Council thirty (30) days prior to each regular Town election for a term of one (1) year, and shall serve without compensation. The Town Clerk shall be chairman. The Election Commission shall have charge of all activities and duties required by it by statute and this Charter relating to the conduct of elections in the Town. In any case where election procedure is in doubt, the Election Commission shall prescribe the procedure to be followed.

The Commission shall provide procedures to establish proof of residency qualification where residency is in question. Upon a showing of good cause, the Commission may require proof of residency by any person registered to vote or attempting to register to vote in the Town, in which case, said person shall not be qualified to vote in any municipal election until the commission is satisfied that reasonable proof of residency has been presented
Section 2.4, *Town of Crested Butte Home Rule Charter*. (emphasis supplied)

- 4.2 Adopting Title 1, C.R.S. with notice of a potential election roll issue, while not utilizing an Election Commission to address proof of residency could be interpreted as the Town Council disregarding this provision.
- 4.3 The Town Council will need to give direction on whether the indemnity is acceptable or not. Again, I am waiting to see the language.
6. The potential election roll issue is creating hurdles relative to the coordinated election. The County Attorney and Town Clerk have indicated that the curative measures planned will take six years to fully implement. Results are not guaranteed. As the Town Attorney, I am concerned that should the Town proceed with the coordinated election

knowing that an election roll issue could exist and may not be corrected before the election, will put the Town in an unnecessarily risky position *vis a vis* the coordinated election and the non use of the Election Commission to check residency (e.g., effected elector, indemnity in favor of the County, etc.).

7. Given the short time considerations on these matters, in particular that adoption of the ordinance adopting Title 1, C.R.S. by August 27 necessitates its introduction on August 4, 2015, it may be necessary, depending upon the response I get from the County Attorney to a request that I have made of the County to allow the Town to utilize an Election Commission in cooperation with (or concurrently with) the County's application of Title 1, that it is advisable that the Town Council hold a special meeting on 24-hours' notice to discuss these matters, including the Town Council making a decision on the acceptability of the indemnity. If this is the case, I will recommend that the Town Council hold such a special meeting on Tuesday, July 28, 2015 at 6:00 p.m., MT.
8. I will get back to you later today with what I learn from the County Attorney and my recommendation for next steps, etc.

Thank you.

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MEMORANDUM

*****Non Attorney - Client Privileged and Confidential Communication*****

TO: Town Council

CC: Todd Crossett, Town Manager
Lynelle Stanford, Town Clerk

FROM: John D. Belkin, Esq., Town Attorney

DATE: July 28, 2015

RE: 2015 Town Election Matters – MEMO 2

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1. This memorandum is in follow-up to my memorandum to you of yesterday, July 27, 2015 regarding Town election matters.
 2. This memorandum and yesterday's memo should serve as the discussion pieces for tonight's special Town Council meeting. **This memorandum guarantees no specific results following the Town Council's decision to pursue either a coordinated election or a polling place local election.**
 3. Initially, I would like to include an Executive Session at the beginning of the meeting for the purpose of providing legal advice to the Town Council, or, in other words, before the Town Council discussion of the substantive election issues. Todd and I will be at the Executive Session along with the Town Council. I will address the specific subject when we are in Executive Session.
 4. As I explained to you in my July 27 memorandum, I have been speaking with the County Attorney regarding the coordinated election and the two requisite intergovernmental agreements (i.e., coordinated election and post card confirmation) (each an "IGA").
 5. I just received a draft of the post card IGA and have reviewed the same. I have attached it hereto for your reference should you care to review it.
 6. I have not yet received a draft of the coordinated election IGA from the County Attorney.

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7. The indemnity in the post card IGA has the Town indemnifying, defending, etc. the County et al. as broadly as possible.
8. I expect that the coordinated election IGA will include equal indemnification language.
9. The post card IGA also expressly states:

“[n]o result or outcome is intended, warranted or guaranteed other than performance of the specific services identified herein.”
10. If you need me to explain how an indemnity, hold harmless and defense provision works, I will explain the same to you. Otherwise, unless you raise the question, I will expect that you understand the same and its implications and will not address the same in the interest of time.
11. As a point of clarification, in my May 27 memorandum I referenced the County utilizing Title 1, C.R.S. I also mentioned in the memo the Town Council adopting Title 1 for the coordinated election. The Town Council discussed these matters on Monday, July 20, 2015 at its regular Town Council meeting. To be clear, Title 1 refers to the *Uniform Election Code of 1992*, the State statute that the Gunnison County Clerk and Recorder operates under in conducting the coordinated election. Please raise any questions that you may have in this regard.
12. Another point of clarification is the potential election roll issue. If you are unclear as to what that issue may be, please raise the matter during the Special Meeting. I am assuming that because the Town Council has discussed this at various times in public since last January, the Town Council is aware of what this means.
13. Again the Town Charter states as follows:

Section 2.4. - Election Commission.

An Election Commission is hereby created, consisting of the Town Clerk and two (2) qualified and registered electors of the Town, who during their term of office shall not be Town officers or employees or candidates or nominees for elective Town office. The elector-members shall be appointed by the Council thirty (30) days prior to each regular Town election for a term of one (1) year, and shall serve without compensation. The Town Clerk shall be chairman. The Election Commission shall have charge of all activities and duties required by it by statute and this Charter relating to the conduct of elections in the Town. In any case where election procedure is in doubt, the Election Commission shall prescribe the procedure to be followed.

The Commission shall provide procedures to establish proof of residency qualification where residency is in question. Upon a showing of good cause, the Commission may require proof of residency by any person registered to vote or attempting to register to vote in the Town, in which case, said person shall not be qualified to vote in any municipal election until the commission is satisfied that reasonable proof of residency has been presented . . . (emphasis supplied)

14. Based on my reading of the above Election Commission provision, knowing that an election roll issue could exist and may not be corrected before the next election, I feel the Town must utilize the Election Commission to establish proof of residency, which is a requirement for voting on Town matters.
15. Title 1 addresses, among other things, voter registration. The Gunnison County Attorney is not comfortable trying to coordinate the Election Commission's proof of residency procedures with the Gunnison County Clerk and Recorder's obligations under Title 1, both pursuant to the coordinated election and the post card exercise.
16. If the goal of the Town Council is to address the potential voter roll issue and residency, Title 1 and the County post card process may not provide appreciable benefit, both long and short term.
17. If the Town Council elects to continue forward and use the coordinated election process, how the Election Commission obligations harmonize with Title 1 and the County coordinated election process under Title 1 is unknown and could be problematic and put the Town and the election in a very risky position. I am most concerned about this issue, and because of this, I cannot recommend this path forward.
18. If the Town Council elects to continue and use the coordinated election process, the Town Council will also need to approve the indemnity, hold harmless and defense of the County.
19. If the Town Council elects to go the path of a local election, we can discuss how that would work, the potential costs, etc.

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INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into this _____ day of _____, 2015 by and between the Gunnison County Clerk and Recorder whose address is 221 North Wisconsin, Gunnison, Colorado 81230 ("Gunnison County") and the Town of Crested Butte whose address is PO Box 39, Crested Butte, Colorado 81224 ("Crested Butte").

RECITALS

WHEREAS, Crested Butte has requested assistance from Gunnison County in determining the number of active registered voters in Gunnison County Precincts 3, 4 and 5; and

WHEREAS, mailing of Official Voter Confirmation Cards may assist in the determination of registered active voters in Precincts 3, 4 and 5; and

WHEREAS, in support of cooperative election efforts, Gunnison County is available to assist Crested Butte in determining the number of active voters in Precincts 3, 4 and 5 by mailing Official Voter Confirmation Cards.

AGREEMENT

NOW THEREFORE, in consideration of the Recitals and the mutual covenants and obligations hereinafter set forth, the parties agree as follows:

1. TERM.

The term of this Agreement shall commence on the date first set forth above and shall terminate on December 31, 2015 unless extended by mutual written agreement of the parties 30 days prior to the expiration date or otherwise terminated or replaced as provided herein.

2. SERVICES.

Gunnison County agrees to assist Crested Butte in determining the number of registered voters in Gunnison County Precincts 3, 4 and 5 by providing the following services:

- A. Determine the number of active registered voters in Precincts 3, 4 and 5 who have been identified as having a mailing address of a post office box in the 81224 zip code.
- B. Export the list of registered voters identified in the above referenced paragraph 2.A from the SCORE - Statewide Voter Registration System.

- C. By no later than September 15, 2015 prepare and mail letters via First Class Forwardable Mail. The mailing shall include a confirmation letter drafted in consultation with staff in the Colorado Secretary of State's Office; front side will have name, street address and mailing address, giving the recipient the opportunity to update any information which is incorrect. Also, included will be a postage paid envelope addressed to the office of the Gunnison County Election's Division.
- D. Any letters returned to the Gunnison County Election's Division marked "Undeliverable", will be flagged in the SCORE system, as "Inactive Returned Mail".
- E. After completion of above paragraph 2.D, a second mailing will be mailed to the same voter attempting again to locate the voter. This second mailing will be mailed First Class Forwardable Mail. (While this step is intended to meet the National Voter Registration Act ("NVRA") requirements for beginning the cancellation process if the voter fails to update the record and fails to vote in the next two General Elections, action pursuant to the NVRA is beyond the scope of this Agreement).

3. CONSIDERATION.

In consideration for the services identified in above referenced paragraph 2, Crested Butte shall pay Gunnison County FIVE THOUSAND EIGHT HUNDRED AND NO/100 U.S. Dollars (\$5,800.00) within 30 days of full execution of this Agreement. Funds shall be made payable to the Gunnison County Clerk and Recorder and forwarded to 221 North Wisconsin, Gunnison, CO 81230.

4. NO OUTCOME GUARANTEED.

It is the clear understanding and agreement of the parties that no result or outcome is intended, warranted or guaranteed other than performance of the specific services identified herein.

5. INDEMNIFICATION.

- (a) Crested Butte agrees to indemnify, defend by an attorney of the choice of Gunnison County at the cost of Crested Butte, and hold harmless the Gunnison County Clerk and Recorder, Gunnison County, its Commissioners, and its and their agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including

death, of any person or damage to property of any kind, brought by any person or entity.

- (b) This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.

6. MISCELLANEOUS.

- (a) SEVERABILITY. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.
- (b) AMENDMENT. No amendment, alteration, modification of or addition to this Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

7. DELEGATION AND ASSIGNMENT.

Gunnison County shall not delegate or assign its duties under this Agreement without the prior written consent of Crested Butte which consent Crested Butte may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

8. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other.

9. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class U.S. mail, postage prepaid, addressed as follows:

Gunnison County: Gunnison County Clerk and Recorder
221 North Wisconsin
Gunnison, CO 81230

Crested Butte: Town of Crested Butte
PO Box 39
Crested Butte, CO 81224

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

10. COUNTERPARTS: FACSIMILE TRANSMISSION.

This Agreement may be executed by facsimile and/or in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All facsimile counterparts shall be promptly followed with delivery of original executed counterparts.

11. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

GUNNISON COUNTY CLERK AND RECORDER

By: _____
Kathy Simillion, Clerk

ATTEST:

Deputy County Clerk

TOWN OF CRESTED BUTTE

By: _____
Aaron Huckstep, Mayor

ATTEST:

Town Clerk